

## IRS ANNOUNCES MORATORIUM ON PROCESSING NEW EMPLOYEE RETENTION CREDIT CLAIMS

### Background

The Employee Retention Credit (“ERC”), now codified in Section 3134 of the Internal Revenue Code, was adopted in order to mitigate some of the economic burdens resulting from the pandemic. In general terms, it is a refundable tax credit for qualified wages paid by employers between March 13, 2020 and December 31, 2021. To qualify, an employer must have had a full or partial suspension of its operations because of orders from a governmental authority. It also must have experienced a significant decline in gross receipts in 2020, or the first three quarters of 2021, or qualify as a so-called “recovery start-up business” during the appropriate period. The IRS stresses that the credit is complex, with very specific eligibility requirements. The refundable credit may be as high as \$26,000 per employee.

### IRS Announcement 2023-169

On September 14, 2023, the IRS issued announcement 2023-169, which placed an immediate moratorium on processing new ERC claims. Under the new moratorium, claims filed after September 13, 2023, will not be processed until the moratorium is lifted. The announcement goes on to say it will extend at least through the end of 2023.



The IRS indicated that the reason for the moratorium was the influx of claims by ineligible businesses that have been misled by aggressive promoters. Many of these promoters claim that filing for the credit is risk free and tout the fact that they are not paid unless and until the company receives payment from the IRS. However, the IRS points out that filing for an ERC credit increases the risk of an IRS audit. Furthermore, if the credit is subsequently disallowed, the employer is left with the obligation to repay the full amount it previously received, plus interest and penalties. In some cases, it may also precipitate a criminal investigation.

*advisory*

In a separate announcement, also issued on September 14, 2023, the IRS listed several “red flags” that may be indicative of an ERC scam. They included (i) unsolicited calls or advertisements; (ii) statements that ERC eligibility can be quickly determined; (iii) large upfront fees and fees based on the amount of the ERC credit paid to the company and (iv) preparers unwilling to sign the ERC refund return.

If you have questions or would like further information about the ERC, please contact PLDO Partner William F. Miller at 508-420-7159 or email [wmliller@pldolaw.com](mailto:wmliller@pldolaw.com).



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